

IN THE UNITED STATES District Court
FOR THE MIDDLE DISTRICT OF ALABAMA
Northern Division

JOE BENOIT MARTIN,
AIS No: 208789
Plaintiff,

VS.

LEON FORNISS, ET AL.,
Defendants,

2007 JUL -5 / A 13 27

Civil Action: 2:07-CV-335-MEF

"Plaintiff Response to the Written Report filed by the Defendants"

Comes, now the above plaintiff response to defendant(s) Special Report(s), Plaintiff shall show good cause for asking indirect writ in this requestful legal cognovit for the Honorable United States Magistrate Judge Wallace Capel, Jr., for leave to take additional discovery [Rule 16].

The above Plaintiff, Martin, an inmate in the Alabama Dept. of Corrections, states that, while he was confined at Station Correctional Facility, Defendants failed to adequately protect him from being assaulted by Robert Nardy, after two (2) incidents between the two (2) inmates. This is "Lack of security in said institution due to indifference and over-crowding, for "Failure to adhere to Alabama Dept. of Corrections Regulation separation of known enemies". This not only violate ADOC Regulations, this violation is a Constitutional guarantee to protect a prison from cruel and unusual punishment.

Inmate, Martin will produce some evidence which would be admissible at trial supporting his constitutional

Claims. Plaintiff has next beyond the pleading and designate specific facts showing that there is a genuine issue for trial, Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). "Plaintiff will show the the [trier of fact] could reasonably find for this plaintiff. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 2512, 91 L.Ed.2d 202 (1986)" Walker v. Darby, 911 F.2d 1573, 1576-1577 511th Cir. 1990].

Plaintiff Affidavit, Disciplinary Report [Exhibit A], Living Agreement [Exhibit B], also witness, Terry Bowling, W/167058, Gerald Wright, B/192472, COI Jeffery Washington, Lt. Willie Copeland [Exhibit C], which stands now as a prima facie case as to each and every exhibit(s) that shall point out and to such malicious intents of their default's in a defamatory manner, Lt. Willie Copeland Affidavit has presented conflicting evidence. Northington, 973 F.2d at 1521, on summary judgment, defendant(s) report is treated as an affidavit, and the court is not authorized to accept it's fact finding if Defendant(s) has presented conflicting evidence. Gee v. Estes, 829 F.2d 1005, 1007 (10th Cir. 1987), Collins v. Cundy, 603 F.2d 510th Cir. 1979, Beed v. Dunham, 893 F.2d 285, 287 N 2 (10th Cir. 1990).

The Plaintiff has demonstrated through Prima facie evidence and appropriate precedent there is a genuine issue of material fact(s) relating to a constitutional violation and that he is entitled to a judgment as a matter of law. Mr. Martin submission(s) clearly has merited his required burden. The Plaintiff is there entitled to a judgment in his favor.

CERTIFICATE OF SERVICE

I certify on the 2 day of July 2007, that copies has been served on the District Court of the United States Middle District of Alabama, Hon. NEAL P. CONNER, Counsel Alabama Dept. of Corrections by U.S. Mail prepaid.

Joe Benoit Martin
Respectfully Submitted,
Plaintiff

EXHIBIT A

ALDOC Form 225B

ALABAMA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT

1. Inmate: Joe Martin Custody: Medium AIS: 208789
2. Facility: Staton Correctional Facility
3. The above named inmate is being charged by Lt. Billy Pittman with violation of rule number 35 specifically Fighting without A Weapon from regulation # 403 which occurred on or about March 27, 2007 at Approximately 3:10 (am), Location: Dinning Hall. A hearing on this charge will be held after 24 hours from service.

4. Circumstances of the violation(s) are as follows: On 3-27-2007, at approximately 3:10 a.m. Inmate Joe Martin W/M 208789 was involved in an altercation inside Staton dinning hall with Inmate Robert Hardy W/M 176046. This puts Inmate Martin in violation of rule # 35, Fighting Without A Weapon.

3-29-07
Date24. B. Pittman
Arresting Officer / Signature / Rank

5. I hereby certify that I have personally served a copy of the foregoing upon the above named inmate and I informed inmate of his/her right to present a written or oral statement at the hearing and to present written questions for the witnesses on this the 30 day of MARCH, 2007, at (time) 4:48 (am/pm).

Roderick Underwood CO
Serving Officer / Signature / RankREFUSED TO SIGN RU
Inmate's Signature / AIS Number

6. Witnesses desired? NO Inmate's Signature YES Joe B. Martin Inmate's Signature

7. If yes, list: Terry Bowling GERALD WHITE
OFF. WASHINGTON

8. Hearing Date 4-8-07 Time 3:53AM Place staton shift office

9. Inmate must be present in Hearing Room. If he/she is not present explain in detail on additional page and attach.

10. A finding is made that inmate (is/ is not) capable of representing himself.

[Signature]
Signature / Hearing Officer

11. Plea: Joe B. Martin 208789 Not Guilty Guilty

12. The Arresting Officer, Inmate, and all witnesses were sworn to tell the truth.

[Signature]
Signature / Hearing Officer**NOT GUILTY**

13. Arresting Officer's testimony (at the hearing): On 3/27/2007, at approximately 3:10am, inmate Joe Martin, W/M 208789, was involved in a physical altercation inside Staton's dining hall with inmate Robert Hardy, W/M 176046.

14. Inmate's Testimony: (See attached statement)

Witness: Terry Bowling, W/167058 Substance of Testimony: "We were talking and Hardy assumed we were talking about him. He got mad and threw a glass with juice on us".

Witness: Gerald Wright, B/192472 Substance of Testimony: "The young boy hit inmate Martin and threw juice and the cup in his face".

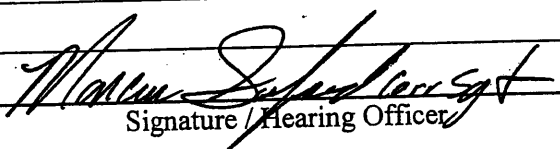
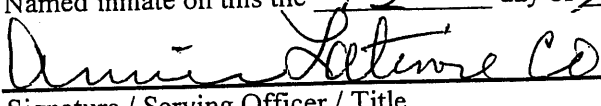
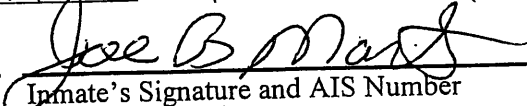
Witness: CO Jeffery Washington Substance of Testimony: "When I came in, I saw inmate Hardy throw a cup with juice in inmate Martin's face".

15. The inmate was allowed to submit written question to all witnesses. Copy of questions and answers are attached.


Signature / Hearing Officer

16. The following witnesses were not called - Reason not called

1. <u>N/A</u>	<u>N/A</u>
2. <u>N/A</u>	<u>N/A</u>
3. <u>N/A</u>	<u>N/A</u>

17. After hearing all testimony, the Hearing Officer makes the following findings of fact: (Be Specific)
 The Hearing Officer finds that: On 3/27/07, at approximately 3:10am, Inmate Joe Martin was involved in a physical altercation inside Staton's dining hall with inmate Robert Hardy, W176046. After hearing the facts, the Hearing Officer finds the defendant was defending himself.
18. Basis for Finding of Fact: The Hearing Officer accepts the sworn statements and testimony of the defendant. The basis for findings shows that inmate Martin was defending himself.
19. Hearing Officer's Decision: _____ Guilty XX Not Guilty
20. Recommendation of Hearing Officer: N/A
- 
 Signature / Hearing Officer
Marcus Sanford, Correctional Sergeant
 Typed Name and Title
21. Warden's Action - Date 3/14/07
 Approved Edward J. Robinson COST
 Disapproved _____
 Other (specify) _____
22. Reason if more then 30 calendar days delay in action. _____
23. I hereby certify that a completed copy of the foregoing Disciplinary Report was served on the above
 Named inmate on this the 13 day of April 2007 at (time) 11:04 (am / pm).
 
 Signature / Serving Officer / Title Inmate's Signature and AIS Number

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JOE BENOIT MARTIN, CIVIL-5 A P 27
AES No. 208789
Plaintiff,

VS. LEON FORNISS,
State of Alabama, Dep.
of Corrections, et al.
Defendants,

Civil Action No. 2:07-CV-335-MEF

Affidavit

I, JOE MARTIN, being duly sworn depose and say; I AM OVER THE AGE OF TWENTY-ONE (21) YEARS OF AGE. I AM THE PLAINTIFF IN THIS CASE THAT WILL PRESENT PRIMA FACIE EVIDENCE THAT CAN NOT BE REFUTED BY LAW AND WILL SHOW THE FOLLOWING HERE TO:

1. I, the plaintiff, JOE MARTIN, WAS ASSAULTED ON FEB. 2, 2007 ON THE 1st shift by inmate ROBERT NARDY AND AN UNIDENTIFIED INMATE WHILE HE WAS SLEEPING. INMATE NARDY WAS CHARGED BEING IN AN UNAUTHORIZED AREA AND ASSAULT ON INMATE. INMATE NARDY PLEA GUILTY TO BOTH VIOLATION ON FEB. 5, 2007. ALABAMA DEPT. OF CORRECTIONS FAILURE TO PROVIDE ADEQUATE SECURITY BEFORE AND AFTER VERBAL AND PHYSICAL ASSAULT BY ANOTHER INMATE; IN WHICH CONSTITUTES CRUEL AND USUAL PUNISHMENT.
SEE: Disciplinary Report

2. ON OR ABOUT FEB. 13, 2007, ON THE 3rd shift INMATE NARDY VERBALLY THREATENED THE PLAINTIFF; AND ON FEB. 14, 2007, PLAINTIFF REPORTED THIS INCIDENT TO LT. COPELAND ON 1st shift.

there was no action taken at no time.

3. ON MARCH 27, 2007, PLAINTIFF, MARTIN WAS INVOLVED IN AN ALTERCATION INSIDE STATION DINING HALL WITH INMATE ROBERT HARDY (FIGHTING WITHOUT A WEAPON). THIS DELIBERATE INDIFFERENCE SHOWN BY DEFENDANTS, TOWARD INMATE MARTIN SAFETY, IS A CLEAR VIOLATION OF THE PLAINTIFF'S RIGHTS, A DOC RULES AND REGULATIONS IN ORDER TO MAINTAIN SECURITY WITH IN AN INSTITUTION; ALSO TO ADHERE TO THE CONSTITUTIONAL GUARANTEE TO PROTECT A PRISON FROM CRUEL AND UNUSUAL PUNISHMENT. SEE: DISCIPLINARY REPORT

THE SMOKE SCREEN PRESENTED BY THE ALABAMA DEPT. OF CORRECTIONS, IN THEIR CLAIM THAT THEY ARE DOING EVERYTHING POSSIBLE TO RELIEVE OVER-CROWDING IS ONLY AN ATTEMPT TO CIRCUMVENT FEDERAL LAW, PROHIBITING ANY STATE TO SUBJECT A PERSON TO CRUEL AND UNUSUAL PUNISHMENT FORBIDDEN BY THE UNITED STATES CONSTITUTION. SEE: AFFIDAVITS FROM DEFENDANTS.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Joe Benoit Norton
AFFIANT

Notary Public

STATE OF ALABAMA
County of Montgomery

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS THE 2ND
day of July 2007.

4/9/2011
My Commission Expires

Curtis L. Brumby
Notary Public

CERTIFICATE OF SERVICE

I CERTIFY ON THE 2 day of July 2007, that copies
HAS BEEN SERVED ON THE District Court of the United
States Middle District of Alabama, Now. NEAL P. COWDER,
COUNSEL, Alabama Dept. of Corrections by U.S. Mail
PREPAID.

Joe Benoit North
Respectfully Submitted,
Plaintiff

JOE BENJAMIN MARTIN, A/S 208789
P.O. Box 150
M.H. Meigs, ALA. 36057

MONTGOMERY AL 36101-0711
03 JUL 2007 PM 4



Office of the Clerk
United States District Court
P.O. Box 711
Montgomery, Alabama 36101-0711

LEGAL MAIL

This correspondence is forwarded from an Alabama State Prison. The contents have not been evaluated. The contents Department of Corrections, and no responsibility for the substance or content of the enclosed communication."

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